IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6842 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYKER @ JAYSINH SARDARSINH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6842 of 2004

MR AR SHAIKH for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 08/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Ms. Banna Dutta for ld.

counsel Mr. AR Shaikh for the petitioner detenu and ld. AGP Ms. HB Punani.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 31.05.2004 passed by the District Magistrate, Vadodara, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in three offence punishable under Sections 66B, 65AE, 81, 116B of the Bombay Prohibition Act, registered between 16.10.2003 and 29.02.2004. The detaining authority has also relied on the statements of three witnesses.

4. The order of detention is assailed by the ld. counsel appearing for the petitioner Ms. Dutta on various grounds. However, she has contended that there were no sufficient cause or material before the detaining authority for recording subjective satisfaction to pass the order of detention on 31.05.2004. Ms. Dutta has mainly focussed her arguments on the ground that there is unreasonable delay in passing the order of detention which has vitiated the order and this Court has considered consistently and turned down such orders of detention when they are found to have been passed after unreasonable delay and that too unexplained delay. For the purpose, the Court has considered consistently the date of registration of last offence as more relevant. In the present case, the last case registered against the petitioner being Karjan Police Station III CR No. 81/2004 was registered on 29.02.2004. Thereafter, after a time gap of about 3 months, the order of detention is passed i.e. on 31.05.2004. There is no explanation for the delay caused. It is true that sponsoring authority has also placed reliance for recording subjective satisfaction on the statements of three witnesses who have claimed privilege under sec.9(2) of PASA Act. I have carefully considered the facts stated by the witnesses in the statements and date of recording of statements. Statements are of 22.03.2004. All the three witnesses were taken for verification before the Deputy S.P., Vadodara (Rural) on 23.03.2004, but for the reasons

best known to the sponsoring authority, those witnesses were not taken before the District Magistrate, Vadodara till 15.05.2004, the date on which verification was made by the District Magistrate. So, the delay caused in placing the papers for verification by the sponsoring authority has also remained unexplained. Even after verification, the order of detention is passed after about 16 days. If preventive detention, in reality was required, then such delay at every stage should not have occurred. This vitiate the validity of the order and such order can not sustain. Hence, this Court is satisfied with that there is no explanation much less reasonable explanation for not passing the order of detention in couple of hours or days after receipt of the papers from sponsoring machinery. There is no satisfactory explanation as to the delay caused. In view of delay on the part of both the authorities i.e. sponsoring authority and detaining authority, it has vitiated the legality and validity of the impugned order of detention. Thus, the unexplained delay as stated above by the detaining authority vitiates the order of detention and it is rightly argued that it is violative of Articles 21 and 22(5) of the Constitution of India, as per settled legal position. So, this ground alone, coupled with other grounds pressed into service as aforesaid, the petition requires to be allowed.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 31.05.2004 passed by the District Magistrate, Vadodara is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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